



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT**

ISSUED TO

Chaney Enterprises Limited Partnership

FOR

Chaney Enterprises – Gainesville RMC Plant

VPDES Permit No. VAG11

Registration No. VAG110351

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Department of Environmental Quality and Chaney Enterprises Limited Partnership regarding the Chaney Enterprises – Gainesville RMC Plant for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Chaney Enterprises" means Chaney Enterprises Limited Partnership a limited partnership authorized to do business in Virginia and its affiliates, partners, and

subsidiaries. Chaney Enterprises is a “person” within the meaning of Va. Code § 62.1-44.3.

3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10.
6. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. “DMR” means Discharge Monitoring Report.
8. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility” or “Plant” or “Site” means Gainesville RMC Plant, a ready-mix concrete plant located at 14505 Lee Highway, in Gainesville, Prince William County, Virginia, owned and operated by Chaney Enterprises.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
13. “Permit” means VPDES Permit No. VAG11, the VPDES General Permit for Concrete Products Facilities, which was issued under the State Water Control Law and the Regulation on January 1, 2019 and which expires on December 31, 2023.
14. “Pollutant” means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Department, are "pollution." Va. Code § 62.1-44.3.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Chaney Enterprises owns and operates the Facility, which is ready-mix concrete plant. The Permit allows Chaney Enterprises to discharge process wastewater that may contain input from vehicle wash water, or vehicle or equipment degreasing activities, and may be commingled with stormwater associated with industrial activity, or both, to North Fork Broad Run, in strict compliance with the terms and conditions of the Permit.
2. Based on DEQ's 2020 305(b) report, North Fork Broad Run is impaired for recreation use due to bacteria monitoring data (*E. Coli*), and the impairment is part of the downstream Occoquan River bacteria Total Maximum Daily Load (TMDL) for the Broad Run watershed. The aquatic life use is considered fully supporting based on benthic macroinvertebrate bioassessment and conventional parameter data. In previous

assessment cycles, there was insufficient data to assess the fish consumption and public water supply uses; since no new data have been collected, the assessment of insufficient information for these uses remains. The wildlife use was not assessed.

Lake Manassas is located approximately 0.15 mile downstream from the Facility. Based on DEQ's 2020 305(b) report, the aquatic life use for Lake Manassas is fully supporting, nutrients were assessed as fully supporting, and the fish consumption, public water supply, wildlife use, and recreation uses were not assessed.

3. In submitting its DMRs as required by the Permit, Chaney Enterprises reported the following monitoring data limit exceedances for stormwater effluent discharges from the Facility:

January 1 through March 31, 2022 DMR for Outfall 001:

- a. Reported a TSS monthly concentration average maximum of 124 mg/L, compared to a permitted average maximum limit of 30 mg/L.
- b. Reported a TSS daily concentration maximum of 124 mg/L, compared to a permitted maximum limit of 60 mg/L.

April 1 through June 30, 2020 DMR for Outfall 001:

- c. Reported a TSS monthly concentration average maximum of 47.6 mg/L, compared to a permitted average maximum limit of 30 mg/L.

July 1 through September 30, 2020 DMR for Outfall 001:

- d. Reported a TSS monthly concentration average maximum of 51.7 mg/L, compared to a permitted average maximum limit of 30 mg/L.

October 1 through December 31, 2020 DMR for Outfall 001:

- e. Reported a TSS monthly concentration average maximum of 128.4 mg/L, compared to a permitted average maximum limit of 30 mg/L.
- f. Reported a TSS daily concentration maximum of 172 mg/L, compared to a permitted maximum limit of 60 mg/L.

January 1 through March 31, 2021 DMR for Outfall 001:

- g. Reported a TSS monthly concentration average maximum of 55.6 mg/L, compared to a permitted average maximum limit of 30 mg/L.

July 1 through September 30, 2020 DMR for Outfall 001:

- h. Reported a TSS monthly concentration average maximum of 38.8 mg/L, compared to a permitted average maximum limit of 30 mg/L.

4. Part I.A. of the Permit lists the numerical effluent limitations for effluent discharges from the Facility.
5. DEQ issued the following four Warning Letters and two Notices of Violation to Chaney Enterprises:

- a. WL No. W2020-08-N-1003 dated August 18, 2020;
 - b. WL No. W2020-11-N-1003 dated November 13, 2020;
 - c. WL No. W2021-02-N-1007 dated February 22, 2021;
 - d. WL No. W2021-05-N-1002 dated May 20, 2021;
 - e. NOV No. W2021-11-N-0001 dated December 9, 2021; and
 - f. NOV No. W2022-05-N-0003 dated June 2, 2022.
6. Chaney Enterprises corresponded with DEQ throughout the enforcement process, submitting written response to the WLs and NOVs on December 14, 2020 (for November 2020 WL), March 12, 2021 (for February 2021 WL), June 16, 2021 (for May 2021 WL), and February 22, 2022 (for December 2021 NOV). On March 10, 2022, DEQ staff had a conference call with Chaney Enterprises to discuss the enforcement process post NOV.
 7. The Regulations, at 9VAC25-193-70, require Chaney Enterprises to comply with the requirements of the Permit as an owner whose registration statement has been accepted by the Department.
 8. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Department, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
 9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Department, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
 10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
 11. The Department has issued no permits or certificates to Chaney Enterprises for the Facility other than VPDES Permit Registration No. VAG110351.
 12. North Fork Broad Run a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
 13. Based on Chaney Enterprises DMR submissions, WL replies submitted in December 2020, March 2021, and June 2021, NOV reply submitted in February 2022, the conference call between DEQ staff and representatives of Chaney Enterprises on March 10, 2021, and related correspondence between DEQ and representatives of Chaney Enterprises, the Department concludes that Chaney Enterprises has violated 9VAC25-31-50, 9VAC25-193-70, and Part I.A of the Permit, by discharging effluent from the Facility while concurrently failing to comply with the conditions of the Permit.

14. In order for Chaney Enterprises to return to compliance, DEQ staff and representatives of Chaney Enterprises have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders Chaney Enterprises, and Chaney Enterprises agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$11,933** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Chaney Enterprises shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Chaney Enterprises shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Chaney Enterprises for good cause shown by Chaney Enterprises, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2022-05-N-0003 dated June 2, 2022, NOV No. W2021-11-N-0001 dated December 9, 2021, WL No. W2021-05-N-1002 dated May 20, 2021, WL No. W2021-02-N-1007 dated February 22, 2021, WL No. W2020-11-N-1003 dated November 13, 2020, and WL No. W2020-08-N-1003 dated August 18, 2020. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law

regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Chaney Enterprises admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Chaney Enterprises consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Chaney Enterprises declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Chaney Enterprises to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Chaney Enterprises shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Chaney Enterprises shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chaney Enterprises shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

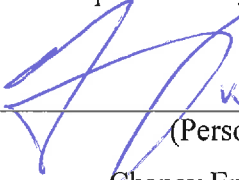
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Chaney Enterprises. Nevertheless, Chaney Enterprises agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Chaney Enterprises has completed all of the requirements of the Order;
 - b. Chaney Enterprises petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Chaney Enterprises.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chaney Enterprises from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Chaney Enterprises and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Chaney Enterprises certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Chaney Enterprises to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Chaney Enterprises.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

Chaney Enterprises Limited Partnership voluntarily agrees to the issuance of this Order.

Date: 7/18/2022 By:  Kyle Murray Land General Manager
(Person) (Title)
Chaney Enterprises Limited Partnership

~~Commonwealth of Virginia~~ Maryland
City/County of Anne Arundel

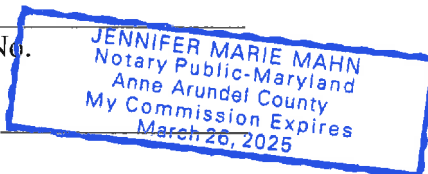
The foregoing document was signed and acknowledged before me this 18th day of July, 2022, by Kyle Murray who is Land General Manager of Chaney Enterprises Limited Partnership on behalf of the partnership.


Notary Public

Registration No. _____

My commission expires: _____

Notary seal:



representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Chaney Enterprises voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of September, 2022.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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APPENDIX A SCHEDULE OF COMPLIANCE

Chaney Enterprises Limited Partnership shall:

1. Within 30 days of the effective date of this Order, develop, and submit to DEQ for review and comment, a plan and schedule of corrective actions (Plan) to return and maintain compliance with the concentrations permitted at the Facility. At a minimum, the Plan shall include: (1) short-term corrective actions, (2) success criteria for evaluating the effectiveness of the corrective actions, and (3) be based on minimum criteria demonstrating a return to compliance of at least three consecutive quarters of no reported TSS exceedances. Chaney Enterprises shall respond to any comments or questions from DEQ within 10 calendar days of the date of the correspondence. Once the Plan is accepted by DEQ, it shall become an enforceable part of this Order.
1. Unless approved by DEQ in writing at a later date, all corrective actions required to bring Chaney Enterprises into compliance with the Permit, are to be completed and documented to DEQ no later than December 31, 2023.
2. Unless otherwise specified in this Order, Chaney Enterprises shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193